

The Judicial Administration and Jurisprudence in Traditional China

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Abstract

Administration of justice in traditional China has been criticized for disregarding established rules and precedents and thus likened to “Khadi justice.” It is a misunderstanding. Since the Qin and the Han periods when laws proliferated and decided cases recorded, traditional Chinese judges, as civil servants elsewhere, took the easy route of applying existing rules and precedents. In the absence of such guidelines they had to find other ways to solve problems brought to them, particularly civil disputes. In doing so, they would carefully examine the facts and resort to norms above the law (e.g., principles of equity and general precepts of justice) , a practice shared by judges in all jurisdictions.

Traditional Chinese jurisprudence is said to be underdeveloped. This only demonstrates how ignorant the critics are. Even before the Qin, legal theories flourished. Through the later periods many scholars devoted themselves annotating the statutory laws and studying basic jurisprudential subjects such as the origin, objectives and functions of law, the relationship between law and other social norms, and left enormous amount of works of great profoundness.

The criticisms are apparently prompted by a now prevalent dissatisfaction with the present Chinese legal system, but a sweeping denial of the Chinese legal tradition is not a good starting point for improvement, especially if the critique is based on misunderstanding and ignorance.

Keywords: tradition, administration of justice, jurisprudence.